

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH LEE SEYBOLD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51310

FILED

SEP 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Urasado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of burglary, forgery, and attempted theft. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court adjudicated appellant Keith Lee Seybold a habitual criminal and sentenced him to serve three concurrent terms of 60 to 240 months in prison, and awarded 259 days of credit for time served.

Seybold contends that the district court abused its discretion at sentencing by imposing a sentence that was significantly greater than that recommended by the Division of Parole and Probation: two terms of 16 to 72 months and one term of 12 to 34 months, with all terms to run concurrently. Seybold asserts that the Division is the officially recognized authority to determine the most appropriate sentence. We conclude that Seybold's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision,¹ and will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations

¹Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

founded on facts supported only by impalpable or highly suspect evidence.”² Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.³ Moreover, the district court may, in its discretion, dismiss a count brought under the habitual criminal statute when the prior offenses are stale, trivial, or where adjudication of habitual criminality would not serve the interests of the statute or justice.⁴

We conclude that the district court properly exercised its discretion at sentencing. Here, the underlying offense involved Seybold attempting to cash a fraudulent check at a casino. The guilty plea agreement, which Seybold signed, provided that he was pleading guilty without any bargain from the State and that the State retained the right to argue for a habitual criminal enhancement at sentencing. The State argued for a prison term of 8 to 20 years, the maximum penalty under the small habitual criminal statute. The district court considered Seybold’s prior criminal offenses, which were neither stale nor trivial. Seybold had a long-range history of theft crimes with nine felony convictions in three different states between 1995 and 2005, and a prior habitual criminal adjudication in New Mexico. Further, Seybold was on parole for a Nevada felony conviction when he committed the underlying offense.

Moreover, Seybold’s sentence was within the statutory parameters of the small habitual criminal statute, which provides a

²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

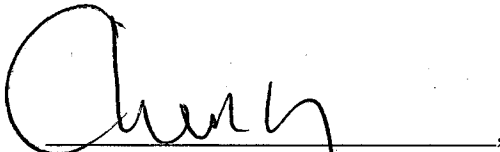
³Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

⁴See Sessions v. State, 106 Nev. 186, 190, 789 P.2d 1242, 1244 (1990).


sentencing range of 5 to 20 years.⁵ Considering Seybold's criminal record, he was eligible for, but did not receive, a sentence under the large habitual criminal statute, which provides a minimum of ten years imprisonment and a potential maximum of life without the possibility of parole.⁶ The district court also had the discretion to impose consecutive sentences,⁷ but declined to do so. Seybold does not argue that the statute is unconstitutional or that the district court relied on impalpable or highly suspect evidence. Under these circumstances, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Seybold's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

⁵NRS 207.010(1)(a).

⁶NRS 207.010(1)(b).

⁷NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967).

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk